

2011

Salt Lake City Corporation v. All taxpayers, property owners, and citizens of Salt Lake City : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH SUPREME COURT

**SALT LAKE CITY
CORPORATION**, located in Salt
Lake County, Utah, a municipal
corporation and a political
subdivision of the State of Utah,

Petitioner/Appellee,

v.

**All taxpayers, property owners, and
citizens of Salt Lake City, Utah,
including nonresidents owning
property or subject to taxation
therein, all other persons having or
claiming any right, title, or interest
in any property or funds affected by
or to be affected by the general
obligation bonds, of Salt Lake City,
to be issued for a multipurpose
regional sports, recreation and
education complex, and Mark
Shurtleff, in his official capacity as
the Attorney General of the State of
Utah,**

Defendants/Appellants.

**Opening Brief of the
Pro Se Appellants**

Oral Argument Requested

Case No. 20110316 - SC

Appeal from Third Judicial District Court, Salt Lake County, State of Utah
Civil Case No. 110901081, Judge Robert Hilder

**FILED
UTAH APPELLATE COURTS**

AUG 9 - 2011

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Appeal from Third Judicial District Court, Salt Lake County, State of Utah
Civil Case No. 110901081, Judge Robert Hilder

Petitioner/Appellee:

SALT LAKE CITY CORPORATION

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the “Listing of All Parties” section)

Listing of All Parties

Defendants / Appellants

The Defendants/Appellants in this appeal are all taxpayers, property owners, and citizens of Salt Lake City, Utah, including nonresidents owning property or subject to taxation therein, all other persons having or claiming any right, title, or interest in any property or funds affected by or to be affected by the general obligation bonds, of Salt Lake City, to be issued for a multipurpose regional sports, recreation and education complex, and Mark Shurtleff, in his official capacity as the Attorney General of the State of Utah.

Pro Se Appellants / Defendants

The *Pro Se* Defendants and Appellants in this appeal are Hans G. Ehrbar, M. Ray Kingston, Lucy Knorr, and Raymond Wheeler.

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The *Pro Se* Appellants have discussed this appeal with Attorney Franklin Reed Bennett.

Represented Defendants/Appellants

The Represented Defendants/Appellants include Jordan River Restoration Network (JRRN), Jan R. Bartlett, Danny Potts, Karen Potts, and Nancy L. Saxton.

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SALT LAKE CITY CORPORATION located in Salt Lake County, Utah, a municipal corporation and a political subdivision of the State of Utah is the Petitioner/Appellee in this appeal.

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Jurisdiction

Jurisdiction is conferred upon this Supreme Court pursuant to *Utah Code* §78A-3-102(3)(j) and §11-30-10.

Standard of Appellate Review

The standard of review for an interpretation of a statute is a question of law which is reviewed for correctness. *Cashe County v. Beus*, 1999 Ut App 134, ¶ 8, 978 P.2d 1043. *State v. Gallegos*, 2007 Utah 81, ¶ 8, 171 P.3d 426.

“Utah case law has interpreted correctness to mean “the appellate court decides the matter for itself and does not defer in any degree to the trial judge’s determination of law.” ” Justice Michael J. Wilkins, Kristy L. Bertelsen, and Matt Snow, “A “Primer in Utah State Appellate Practice”, Utah Law Review, volume 2000, no. 1, page 130, ¶ 4, sentence 3. In effect, the review is *de novo* – with no need to determine or reference how the trial court may have ruled the issue.

This issue is a mixed question of law and fact. Judge Norman H. Jackson noted “As explained in Pena, [*State v. Pena*, 869 P.2d 932 (Utah 1994)] 869 P.2d at 932, appellate courts “decide how much discretion to give a trial court in applying the law in a particular area by considering a number of factors pertinent to the relative expertise of appellate and trial courts in address those issues.” *Id.* Considerations favoring a grant of board discretion include the following:

(I) whether the facts to which the legal rule is to be applied are so complex and varying that no rule adequately addressing the relevance of all these facts ca be spelled out;;

(ii) whether “the situation to which the legal principle is to be applied is sufficiently new to the courts that appellate judges are unable to anticipate and articulate definitively what factors should be outcome determinative;; and (iii) whether “the trial judge has observed ‘facts,; such a witness’s appearance and demeanor, relevant to the application of the law that cannot be adequately reflected in the record available to the appellate courts.”

Judge Norman H. Jackson, “Utah Standard of Appellate Review”, Utah Bar Journal, October 1999, volume 12, no. 8, p. 24, column b, ¶ 2. [Bracketed information inserted for clarity.]

Interpretations of federal and state constitutions are questions of law. *Grand County v. Emery County*, 2002 UT 57, ¶ 6, 52 P.3d 1148. When the appellate review involves questions of law, the standard of review is for correctness, giving no deference to the district court’s legal conclusions. *State v. Rinehart*, 2006 UT App 517, ¶ 8, 153 P.3d 830.

Determinative Law

The select “Constitutional provisions, statutes, ordinances, rules, and regulations whose interpretation is determinative of the appeal” are listed below.

Statement of Issues and Standards of Review

Pro Se Appellants incorporate and join Represented Appellants in their opening brief’s Statement of the Issues. Pro Se Appellants further add that because of these issues they appeared as citizens at the district court’s Bond Validation Hearing on February 9, 2011, to defend their common interests and challenge the validity of bonds. Pro Se

Appellants were ordered to be bound by unique courtroom procedures applicable only to them according to the court's Decorum Order as well as procedures that were adopted during the course of the February 9, 2011 hearing and as stated in more detail in Pro Se Appellants' argument.

Issue 1: Whether the trial court denied Pro Se Appellants Constitutional due process rights to fully defend their position.

Standard of Review: Pro Se Appellants incorporate and join Represented Appellants' brief's standard of review for their Issue No. 3.

Issue 2: Whether the District Court erred when it concluded that Salt Lake City was entitled to an Order Validating the Proposition 5 Bond.

Standard of Review: The appropriate standard of proof to be applied in a proceeding under the Utah Bond Validation Act, Utah Code Annotated §11-30-1 et. seq. is a question of law reviewed under a correction of error standard. *Jeffs v. Stubbs*, 970 P.2d 1234, 1244 (Utah 1998).

Issue 3: Whether the District Court Erred when it concluded that the Bond Validation Action is not even a close call.

Standard of Review: Questions of statutory interpretation are reviewed for correctness with no deference to the trial court's interpretation. *Olsen v. Chase*, 2011 UT App 59, ¶7 (Utah App. 2011).

Statement of Case

Nature of the proceeding

The final judgment / order Pro Se Appellants appealed from was entered and from which the appeal is taken:

*Order was signed on June 20, 2011 and
the Order was filed on June 21, 2011.*

The rulings and/or findings of the trial court included in the judgment or order from which the appeal is taken:

*same as above
(See Attachment "1")*

In the interests of expediency from common party interests, Pro Se Appellants join and incorporate the Represented Appellant's opening brief's nature of proceedings. They further add that they appeared at the district court's Bond Validation Hearing on February 9, 2011, to defend their common interests and challenge the validity of bonds. Pro Se Appellants were ordered to be bound by unique courtroom procedures applicable only to them according to the court's Decorum Order as well as procedures that were adopted during the course of the February 9, 2011 hearing.

Represented Appellants filed a combined separate notice of appeal and subsequently filed a combined Motion for Reconsideration regarding the briefing

schedule. This Court consolidated the appeals and ordered that all opening briefs be filed by August 9, 2011.

Statement of Relevant Facts

Pro Se Appellants incorporate and join Represented Appellants in their statement of facts. The facts in common between the parties gave rise to the desire of Pro Se Appellants to defend against the bond as concerned citizens of Salt Lake City. (Rec. Post-hearing briefs of Raymond Wheeler and M. Ray Kingston.) In addition, Pro Se Appellants were differently treated during the hearing process than either Salt Lake City or Represented Appellants. They claimed to be not well prepared because of lack of notice (cited in detail in the argument) and were subjected to the Decorum Order which provided strict guidelines by which they could speak (Rec. Decorum Order dated February 3, 2011 and Amended Decorum Order dated February 8, 2011.)

Summary of Argument

The district court misapplied the Local Government Bonding Act and the Bond Validation Act. First, the City failed to meet its burden to establish by proper allegation of law and fact all of the necessary allegations regarding the validity of the Prop 5 Bond it requested the District Court to validate. The process the City followed to authorize issuance of the Bond was significantly defective and riddled with material errors and omissions. Despite numerous defects, the District Court employed a narrow interpretation of the Bond Validation Act and ruled that the City had met its burden to establish every

necessary allegation in its amended petition and was entitled to an order validating the Prop 5 Bond.

Second, the due process rights of the defendants in the bond validation action were not respected, which significantly hindered the defendant's ability to show cause why the Prop 5 Bond should not be validated. The bond validation hearing was not properly noticed, and personal jurisdiction was not established. Also, the District Court conducted the proceeding according to a defective decorum order that further infringed upon the due process rights of the defendants.

Argument

I. The Trial Court Denied Pro Se Defendants Due Process Rights to Fully Defend Their Position

A. Pro Se Appellants join in Represented Appellant's opening brief's argument that the Notice of the Bond Validation Act hearing was insufficient, improper, and denied due process rights. Pro Se Appellants did not receive actual notice of the hearing, with the exception of Raymond Wheeler who received a subpoena just seven days prior to the hearing from Salt Lake City. Mr. Wheeler filed an objection to Salt Lake City's subpoena because it did not provide enough time for compliance and the subpoena was vague. (Rec. Declaration of M. Ray Kingston, Rec., Hearing Tr. p.31 -33.)

B. Pro Se Appellants further argue that as a class of unrepresented Salt Lake City citizen defendants they were additionally deprived of their Constitutional procedural due process rights in the Bond Hearing procedures. Pro Se Appellants were

prevented from adequately defending against the bond validation suit because the decorum orders and hearing procedures did not provide sufficient time or notice to either prepare for their defense ahead of time or present their defense and provide evidence. Utah's Constitution provides that, "No person shall be deprived of life, liberty or property, without due process of law." Utah Const. art. I, § 7. See also U.S. Const. amend. V and XIV, §1. The courts have agreed that, "The right to present a defense is anchored in the Fifth and Fourteenth Amendment right to due process." *United States v. Rodriguez-Felix*, 450 F.3d 1117, 1121 (10th Cir. 2006). See also *United States v. Janati*, 374 F.3d 263, 273-75 (4th Cir. 2004) (addressing "the appropriate balance between the district court's right to manage trials and the government's right to prove its case") As citizen defendants, the Pro Se Appellants were actual parties to the suit. (Rec. Hearing Tr. P. 10.) *State v. Sarasota County*, 118 Fla. 629, 159 So. 797 (1935). Parties are not simply on-lookers to be relegated to the corridor, but essential players with lawful right to a fair judicial process that includes full participation. In *People Against Tax Revenue Mismanagement, Inc. et al, v County of Leon Florida*, 583 So. 2d 1371, 1376 (Florida 1991) several hurdles were set by the court pertaining to the groups' complaint that their due process rights were abridged. Pro Se Appellants have met this case's standards. They made argument that the proceedings deprived them of a meaningful opportunity to participate in the proceedings, present evidence, and make argument. (Rec., Objection to Minute Entry

dated 2/22/11.) Further, unlike the party in the above case who were given a month's notice, several Pro Se Appellants testified that the notice in the instant matter was insufficient for due process. (Rec., Hearing Tr. p. 28, 29, 30, 94, and Rec. Declaration of M. Ray Kingston dated 2/22/11, p. 2-3.) Pro Se Appellants join the Represented Appellants' assessment of how this Court should evaluate procedural requirements as a question of law to be reviewed for correctness and the determinative law surrounding that assessment as stated in their opening brief.

Citizen defendants who appeared the morning of the February 9, 2011, hearing discovered by surprise a Decorum Order dated February 3, 2011, and an additional Amended Decorum Order dated February 8, 2011¹ that delineated and minimized their rights as legitimate parties during the hearing. (Rec., Declaration of M. Raymond Kingston p. 3). The initial Decorum Order's certificate of service listed only the attorney for Salt Lake City and the State of Utah's Attorney General. (Rec., Decorum Order, dated February 3, 2011.) The second Decorum Order's certificate of service listed counsel for the State of Utah, Salt Lake City, and added counsel for the Represented Appellants. (Rec., Decorum Order dated February 8, 2011.) As for the actual hearing process, the hearing judge, Judge Hilder stated that, "The process here is you didn't need to file an answer. You needed to show up." (Hearing tr. p. 49 L 7-9). However, showing up instead of filing an answer (which would also have put the Pro Se Appellants on the

¹ The Amended Decorum Order allotted time to hear a motion to dismiss the Attorney General and a motion for and order of mailing the notice or for its publication by the Represented Appellants, but left the rest of the initial Decorum Order in tact.

court's mailing list of pleadings and subsequent orders such as decorum orders) clearly put them at an unfair disadvantage to defend against the action. Per the initial Decorum Order, the Pro Se Appellants and other citizens who wished to contest the Petition were allowed only three minutes each to wing a defense based upon "showing up". (Rec., Decorum Order, Court Proceedings No. 3, 2/3/11.) Yet, their property interests effected by this bond validation were as much at stake as those of the Represented Appellants who were afforded some additional time via their counsel and those of Salt Lake City. In stark comparison, the Decorum Order provided Salt Lake City's counsel 20 minutes at the outset of the hearing to present the petition and rebuttal. (Rec. Hearing Tr. p. 75 – 76.) While the Judge Hilder did allow citizen defendants limited opportunity to speak beyond their initial three minutes, witnesses examination, and brief closing arguments, Pro Se Appellants were not at all informed of this prior to the hearing and so could not be prepared. (Rec. Hearing Tr. p. 92, 102, and 217.) Instead, Pro Se Appellants were expected to mount a defense on the fly as though on a high school debate team rather than parties to a court hearing. Further, legitimate testimony allowed by the Decorum Order was even curtailed. During the hearing Pro Se Appellant Hans Ehrbar, a professor of Economics and Environment at the University of Utah, responded as having an issue with two large volumes of evidence Salt Lake City requested to be entered. (Rec. Hearing Tr. p. 120, p. 69). While on the topic of this collection of evidence Professor Ehrbar requested the addition of evidence that could have a direct effect on the validity of the

bond due to environmental changes. Utah Code Ann. §11-30-2 defines validity as, “any matter relating to the legality and validity of the bonds and the security therefore . . .”

Professor Ehrbar was on-point in terms of validity, but he was interrupted and his testimony was abruptly cut off so that he could not fully develop the relevance that pertained to the immediate topic of the evidence.

THE COURT: Sir, you need to understand, this is a narrower scope here and there’s other litigation pending in other venues that may or may not get into these issues.

This is very much about the bond itself and not underlying environmental issues and we’ll hear - - we’ll hear more on that, I’m sure.

MR. EHRBAR: Well, but - -

THE COURT: But this isn’t the time to hear it. I’m sorry, okay?

At this point Professor Ehrbar attempted to explain how his evidence was relevant to the validity of the bond, (and therefore part of that narrow scope) but again, was not allowed to continue.

MR. EHRBAR: It has a little relevance to the bond because the bond is not going to payoff and we ask that taxpayers don’t have to foot the bill because of other - -

THE COURT: Okay. I understand your concern . . . It will more likely come up in another venue or forum, okay?

Are you ready Ms. Furse?

The courts have long held that “it should be the purpose of the courts to afford litigants every reasonable opportunity to be heard on the merits of their cases *Bunting Tractor Co. v. Emmett D. Ford Contractors*, 272 P.2d. 191, 278 (Utah 1954). It was a deprivation and violation of due process rights to disallow Professor Ehrbar’s presentation of testimony and evidence. Although he spoke later in court, it was unreasonable to curtail testimony related to bulk of evidence. In the intimidating manner by which he was cut off several times it chilled the process by which non-attorney

citizens had to defend themselves. Pro Se Appellant, Raymond Wheeler was allowed to go slightly over his allotment of three minutes so that he could read a prepared statement. (Rec., Hearing Tr. p. 107.) Yet, he could not fully present his defense by including evidentiary documents because he “didn’t feel I had adequate time to prepare” (Rec. Hearing, Tr. p. 108). There were other problems with the hearing procedures and due process. Some of the citizens who wished to speak were not given the chance to personally testify before having to leave the hearing. (Rec., Hearing Tr. p. 100). Another who was to be questioned left. For example, Luke Garret, a Salt Lake City councilman, was a witness with whom Represented Appellants wanted to question. (Rec. Hearing Tr. p. 230, L. 15-19.) Worse, Pro Se Appellants were not allowed time to gather and present evidence that would defend their case because they were not informed of the final procedures that would be used in the hearing. This lack of hard evidence was noted by counsel for Salt Lake City.

MS. FURSE: Your honor, I would just direct you to the lack of evidence in the record today. There has been a lot of testimony about someone somewhere said something sometime, and much of that is with respect to items that actually are recorded and could have been entered as evidence today. We did our best, of course, to produce everything that we think is relevant that we think is relevant and we are open in other ways for that to occur.”

(Rec., Hearing Tr. P. 250, L. 15 - 23)

At the end of the hearing, Salt Lake City provided an additional case to opposing council and the court, but no copies were made available or provided to the Pro Se Appellants so

that they could be apprised of the same information necessary for their defense. (Rec., Hearing Tr. p. 235.)

The Decorum Order and the hearing judge noted the possibility to continue the Bond Validation Hearing which would have afforded Pro Se Appellants a chance to present evidence and muster their defense, but took no action to do so. Specifically, the Decorum Order stated, “If circumstances warrant it, the Court may continue the hearing to additional dates, but all passes must be obtained on the morning of February 9, 2011.” (Rec., Decorum Order dated 2/3/11.) The hearing judge spoke to the possibility of more than one day for the hearing. “I do not know what the timetable we’ll look at in terms of what we still have after today. I think we’ll be following the statute closely. But I can tell you this, we’ll be done by August 1st because I’m retiring on that day. (Rec. Hearing Tr. p. 4.) and in response to a request from Pro Se Appellant Ray Wheeler to present a summation, “I don’t know if we’ll get to that today or not, we’ll have to see how we do with the evidence.” (Rec. Hearing Tr. p. 217.)

Given the complex issues, the years that had passed from the bond election in 2003 until the validation hearing in 2011, and the number of Pro Se citizens who sincerely wished to present evidence, question witnesses, and provide testimony at the hearing the court could have easily continued the hearing within a reasonable time and within the bounds of the urgency of the Bond Validation Act so that the citizen defendants could be granted due process in defending their case. See *Citizens for Ethics*

in Gov't, L.L.C. v. Atlanta Dev. Auth. 303 Ga.App. 724 (694 S.E.2d 680) where the bond proceeding was continued to allow for discovery. Instead, Pro Se Appellants were invited to submit responses to briefs after counsel for Salt Lake City complained about lack of evidence (quoted above). This invitation caused confusion and further deprived them of due process rights.

Really it's the city, but citizens have the same right.

If you wish to submit anything in writing in response not yet, you have on Friday at five to do it. You have Friday at five to decide if you're doing it. You can take what you need, you're waiting for the decision. So long as I know by Friday at five that I'm either going to get something or I'm not, I'll stay on track from today. If you say no and you have liberty to choose your dates just tell me that date but the 10 days runs from there. Okay?

(Rec. Hearing Tr. 251.)

Based on the Court's invitation, several Pro Se Appellants submitted post-hearing briefs. (Rec., Declaration of M. Ray Kingston dated 2/22/11 and Rec., Pro Se Defendant's Brief by Raymond Wheeler.) The Court changed its mind and entered a Minute Entry on February 14, 2011 to which one of the Pro Se Appellants submitted an objection (record noted above.)

As demonstrated, the Bond Validation Hearing was skewed against protected due process rights for the Pro Se Appellants from the start of the deficient Notice, to the surprise Decorum Orders, to the changeable hearing procedures, and finally to the post-hearing briefing. It was not possible for the Pro Se Appellants to be fully knowledgeable of their rights ahead of the hearing, nor was it possible for them to participate in a

meaningful manner with preparation and evidence to defend their case once the hearing began. Post-hearing remedies were not sufficient and the Court ruled against any submissions of evidence that Pro Se Appellants lacked and needed during the hearing.

I. The District Court Erred When It Concluded that the Salt Lake City Was Entitled to an Order Validating the Proposition 5 Bond.

Under the Utah Bond Validation Act, bonds may be validated only if they comply with the Local Government Bonding Act. Utah Code Ann. § 11-30-3. In validating the Prop 5 Bond, the District Court must determine, in part, whether the City, through “proper allegations of law and fact,” has established the “statutory authority by which [the bond validation petition] was filed” and the “statutory authority by which [the City] authorized the issuance of the bonds” and the “ordinance, resolution, or other proceedings by which [the City] authorized the issuance and delivery of the bonds” and the “purpose of the bonds.” *Id.* § 11-30-3(3). In addition, the District Court must determine the “validity” of the bonds as defined. Utah Code Ann. § 11-30-2(9). In determining the “validity” of the bond, the Court must cast a wide net to consider and evaluate any matter relating to the legality and validity of the bond, including, without limitation, the validity and legality of “[the City’s] authority to issue and deliver the bonds” and “any ordinance, resolution, or statute granting [the City] authority to issue and deliver the bonds” and “all proceedings, elections, if any, and any other actions taken or to be taken in connection with the issuance, sale, or delivery of the bonds” and “the purpose, location, or manner of the expenditure of funds.” *Id.* § 11-30-2(9). Failure to comply with the Local Government Bonding Act may be ignored only if that failure gives rise to no “substantial

defects or material errors and omissions in the issuance of the bonds.” Utah Code Ann. § 11-30-9.

Here, the City improperly seeks the District Court’s validation of its intent to issue \$15.3 million in general obligation bonds for construction a multi-million dollar public facility without conforming to many applicable laws or considering valid concerns raised by the public regarding the expenditure of bond proceeds. Yet, the District Court concluded that the City had met its burden to establish the validity of the Bond based on a limited set of allegations set forth in its Amended Petition and a narrow interpretation of the bond statutes. In reaching this conclusion, the District Court erred in many respects: (i) it concluded that the scope of the issues it faced were narrow, and not subject to much of the law cited, by the defendants, including law governing zoning and land use decisions; (ii) it concluded that the statute governing the proceedings did not provide a forum for many of the issues raised by the defendants, e.g. environmental issues; (iii) in ignoring the scope of analysis allowed and required by law, and raised by defendants, it ruled that the bonds the City intends to issue would be legal, valid and binding obligations on the City and are in compliance with the laws of the State of Utah.

A. The Court Erred when it concluded that the City met its burden to establish every necessary allegation in its Amended Petition for validation of the Bond.

In validating the Prop 5 Bond, the District Court must determine, in part, whether the City, through “proper allegations of law and fact,” has established the “statutory authority by which [the bond validation petition] was filed” and the “statutory authority by which [the City] authorized the issuance of the bonds” and the “ordinance, resolution,

or other proceedings by which [the City] authorized the issuance and delivery of the bonds” and the “purpose of the bonds.” Utah Code Ann. § 11-30-3(3). In addition, the District Court must determine the “validity” of the bonds by definition. Utah code Ann. § 11-30-2. The District Court erred when it concluded the City had met its burden to establish every necessary allegation for validating the Bond. More specifically, the District Court erred because: (i) the City lacked standing to file its Amended Petition and failed to meet the requirement to establish its statutory authority to do so; (ii) the City lacked authority to authorize issuance of the Bond and failed meet the requirement to establish its statutory authority to do so; (iii) the City’s Initial Bond Resolution was not legal or valid, therefore the City failed to meet the requirement to establish the ordinance, resolution or other proceeding by which it authorized issuance of the Bond; (iv) the purpose of the bond had materially changed since voters approved the Bond in 2003, therefore the City failed to meet the requirement to establish the purpose of the Bond; and (v) the City failed to establish the “validity” of the bond as defined in Utah Code Ann. §11-30-2.

1. The City lacked authority to issue the Bond and failed to meet the requirement to establish its statutory authority to do so.

Under Utah law, all public facilities must comply with a locally adopted general plan before they can be authorized or constructed. Utah Code Ann. §10-9a-406. “After the legislative body has adopted a general plan, no street, park, or other public way, ground, place, or space, no publicly owned building or structure, and no public utility, whether publicly or privately owned, may be constructed or authorized until and unless it

conforms to the current general plan. “ Id. §10-9a-406. At the time of the Prop 5 Bond Election, the City had finalized the site for the Prop 5 Bond Facility along the Jordan River at 2000 North and 2000 West as evidenced by the information provided to voters in the Voter Information Pamphlet (See Exhibit J, App. Appx., 044, 1223-1229), news articles appearing in the Salt Lake Tribune (See Exhibit N, App. Appx., 048, 1266-1275), and other materials produced by the City. However, the City’s general plan described future uses and land use designations for the proposed site that did not support development of the Prop 5 Bond Facility at that location. Furthermore, at the time of adoption of Resolution 12 on February 9, 2010, the date the City alleges it authorized issuance of the Bond, the City’s general plan still did not describe or contemplate the Prop 5 Bond Facility a long the Jordan River at 2000 North and 2000 West. However, from the time of the Bond Election in 2003 until February 9, 2010, the City’s general plan did clearly identify the site approved by the City Council for the sports complex at a completely different location. Without specific reference to the Prop 5 Bond Facility along the Jordan River in the general plan at the time of the Bond Election or adoption of Resolution 12, the City lacked authority to take any action that allegedly authorized the project. Id. §10-9a-406. In fact, according to Utah Code Ann. §10-9a-406 the City was barred from authorizing the issuance of the Bond for development of the public facility along the Jordan River. In this regard, the District Court erred in determining the City had met its burden of establishing its statutory authority to authorize issuance of the Bond. This conflict with the City’s general plan and subsequent violation of state law invalidates the adoption of Resolution 12 by the City Council on February 9, 2010. The

District Court erred when it concluded that the Initial Bond Resolution was legal and valid. The District Court erred in reaching this conclusion because it incorrectly determined the scope of the issues before it in the bond validation proceeding was narrow, and not subject to much of the law cited by defendants. This constitutes a significant defect and material error and omission in the issuance of the bond that should have resulted in the District Court ruling the Bond invalid.

2. The City lacked standing to file its Amended Petition and failed to meet the requirement to establish its statutory authority to file a bond validation petition.

Under the Utah Bond Validation Act, a petition to seek validation of a bond can be filed only after a government entity authorizes issuance of the bond, but not after the bond has been issued. Utah Code Ann. §11-30-3(1). Accordingly, a government entity must demonstrate that it has fully and legally authorized issuance of the bond, but not actually issued the bond, to qualify under the law to file a bond validation petition and bring about the bond validation proceeding. Otherwise, failure by a government entity to prove it has met the minimum requirements means it lacks standing to ask the court to validate the bonds or adjudicate other questions of law related to the issuance of the bond.

Here, the City clearly lacked standing to file their Amended Petition to seek validation of the Prop 5 Bond under Utah Code Ann. §11-30-3(1). The City lacked standing for two reasons: (i) the Initial Bond Resolution was illegal and invalid because the stated purpose of the Bond conflicted with the City's general plan and violated state land use law governing public facilities Id. §10-9a-406; and (ii) the City never fully authorized issuance of the bond. In this case, the City alleges that it authorized issuance

of the Prop 5 Bond by adopting an Initial Bond Resolution (Resolution 12) on February 9, 2010 (See Exhibit 1, App. Appx., 010, 0310-0373), and presumably qualified under Utah Code Ann. §11-30-3(1) to file a petition for bond validation. However, in the first analysis of standing, the City lacked authority to authorize issuance of the bond through adoption of Resolution 12 of 2010. The purpose of the Prop 5 Bond conflicted with the City's general plan, and further violated state land use law that prohibits authorization of any kind for a public facility that does not conform to the locally adopted general plan. Therefore, in this instance, the Court erred when it concluded that Resolution 12 was legal and valid, and that the Prop 5 Bond complied with the laws of the State of Utah. The alleged authorization to issue the Bond was nullified by legal conflicts with state law and the local general plan. In the second analysis of standing, the City alleges that it adopted Resolution 12 and effectively approved the "final deal" for issuing the Bond. However, by its very terms, Resolution 12 does not fully authorize the issuance of the Prop 5 Bond. Instead, Resolution 12 states that the bond will issue "pursuant to a resolution to be adopted by the City Council authorizing and confirming the issuance and sale of the Bonds (the substantially final form of which is attached hereto as *Exhibit 1* and is herein referred to as the '*Final Bond Resolution*')." (See Resolution 12 at §1 (emphasis added), App. Appx., 010, 0310-0373). As a result, by its own terms, Resolution 12 does not fully authorize the issuance of the bond; it merely expresses the City's intent to finally authorize and issue the Prop 5 Bond at a later date. The Prop 5 Bond can only be fully and finally authorized for issuance under the Final Bond Resolution. (See Exhibit 1, App. Appx., 010, 0310-0373). However, it is undisputed that

the issuance of the Prop 5 Bond for construction of the Prop 5 Facility. Similarly, the City's discretion was limited by the Clean Water Act, which determined many aspects of the Prop 5 Facility design. The Supreme Court should take judicial notice of the fact that defendants are currently involved in several lawsuits with the City over issues related to the legality of the Prop 5 Bond purpose, location, and manner of expenditure of bond proceeds. All of these factors must be considered and evaluated during the bond validation proceedings, as required by the provision of the Utah Bond Validation Act, the Local Government Bonding Act, and other applicable laws. It is ironic and reveling to note that the District Court erred in ruling that the prop 5 Bond issued pursuant to the Initial Bond Resolution complies with the laws of the State of Utah, when the District Court also concluded that many of these same laws are not relevant to the bond validation process. The lack of analysis of many laws and issues raised by the defendants in this case constitutes significant defects and material errors and omissions in the issuance of the Bond.

II. The District Court Erred When It Concluded that the Bond Validation Action Is Not Even A Close Case.

The District Court erred in making the sweeping conclusion that the bond validation action was not even a close case. The District Court compounded its error in judgment by determining that many applicable laws and issues raised by defendants in the bond validation action were not relevant. Had the District Court taken all of the legal questions under consideration, which it is required to do under the statute, it would have found completely the opposite. Properly conducted, the bond validation proceeding

would have examined many interrelated and complex issues and questions of law that affect the “validity” of the Bond. The District Court erred by reducing the question of “validity” to the few allegations outlined in the City’s Amended Petition. The City was prohibited from authorizing the issuance of the Initial bond Resolution, which compromised the City’s standing to file their Amended Petition for validation of the Bond. The lack of analysis of many issues raised by the defendants in this case constitutes significant defects and material errors and omissions in the issuance of the Bond.

Conclusion

The procedures leading to the bond validation hearing were materially flawed with errors and omissions that go to the core of the very proposition put before the citizens of Salt Lake City for a vote. The hearing itself designed to shift through the facts so that the bonds could be declared valid, were inherently flawed themselves to the point that Pro Se Defendants and Represented Defendants were denied Constitutional due process rights. The Pro Se Defendants /Appellants pray that the Court remand to the Trial Court for a new Bond Hearing.

Alternatively, the Pro Se Appellants pray that the Bond Validation Act be held unconstitutional.

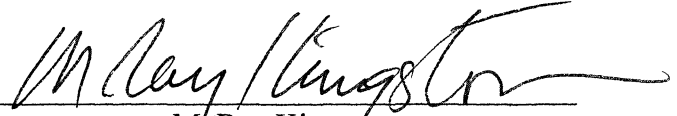
Alternatively, require the City to resubmit the Bond to the Electorate with the more limited purpose of just a soccer facility excluding any promise of an educational complex.

Filing Signatures of *Pro Se* Defendants

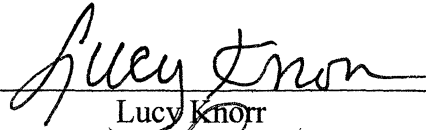
Respectfully dated and submitted this Tuesday, August 9, 2011.



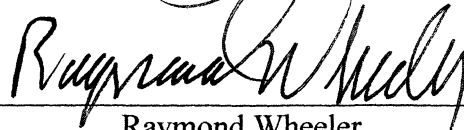
Hans G. Ehrbar



M. Ray Kingston



Lucy Knorr



Raymond Wheeler

CERTIFICATE OF SERVICE

I hereby certify that on Tuesday, August 9, 2011, I caused to be mailed by U.S. Postage Pre-paid first class mail two true and correct copies of the preceding document entitled:

**Opening Brief of the
Pro Se Appellants
Oral Argument Requested**

to counsel of each of the other parties in this case. (The means of service is indicated by the darkened box to the right of the intended recipient):

Edwin P. Rutin, II
Evelyn J. Furse
J. Wesley Robinson
Attorneys for Petitioner /Appellee
Salt Lake City Corporation
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- ☒ United States first-class mail
with postage prepaid
- ☐ Hand delivered

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Karthik Nadesan (10217)
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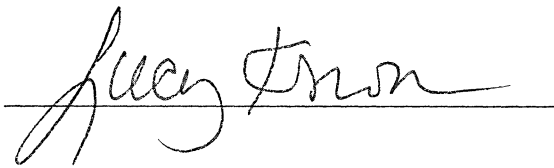
- United States first-class mail
with postage prepaid
- Hand delivered

In addition, I mailed ten (10) copies (i.e., “Ten copies – one with original signature”) of the preceding document with a “blue” color cover and “a compact-type” velo binding to

THE UTAH SUPREME COURT

pursuant to UTAH RULES OF APPELLATE PROCEDURE, Rule 27(c) and (d), as well as,
“Form 8. Checklist for Briefs – Rules 24, 26, and 27.”

DATED this Tuesday, August 9, 2011.


Lucy Knorr

Attorneys for Petitioners

JORDAN RIVER RESTORATION
NETWORK, NANCY L. SAXTON, JAN R.
BARTLETT, AND DANNY POTTS,
Petitioners,

SALT LAKE CITY CORPORATION, SALT
LAKE CITY COUNCIL,

The Honorable Glenn K. Iwasaki

1. Petitioner Jordan River Restoration Network (“JRRN”) is a public interest environmental organization incorporated as a not-for-profit entity in Salt Lake County, Utah. JRRN’s activities include stewardship, advocacy and education regarding public interest issues affecting the Jordan River. JRRN’s members and constituents include over 550 residents of Salt Lake City and Salt Lake County. JRRN has filed this complaint on behalf of those residents of Salt Lake City adversely affected by the Proposition 5 Bond.

2. Petitioner Nancy L. Saxton is a resident of Salt Lake City, Utah adversely affected by the Proposition 5 Bond.
3. Petitioner Jan R. Bartlett is a resident of Salt Lake City, Utah adversely affected by the Proposition 5 Bond.
4. Petitioner Danny Potts is a resident of Salt Lake City, Utah adversely affected by the Proposition 5 Bond.
5. Jurisdiction is appropriate under Utah Code Ann. § 11-14-316.
6. Venue is appropriate under Utah Code Ann. §78B-3-307.

FACTUAL BACKGROUND

1. In July 2003, the City unveiled plans for a Regional Sports Complex (the “Complex”).
2. Initial plans for the Complex included 16 baseball diamonds and more than 30 soccer and multi-sport play fields.
3. During the period between August and October 2003, the Salt Lake City Council discussed, adopted, and amended a special election ballot resolution known as the Proposition 5 Sports Complex Bond (“the Bond”) in order to obtain voter approval for the City to obtain financing for the Complex.
4. The City Council did not include any site-specific language for the Proposition 5 Facility in the Bond Election Resolution.
5. However, the City proposed constructing the sports complex on a 212-acre parcel located within the floodplain of the Jordan River at 2200 North Rose Park Lane in unincorporated Salt Lake County and owned by the Utah Division of State Parks.
6. The property targeted by Salt Lake City was originally purchased in the 1970s by the State of Utah for floodplain preservation, wildlife habitat, passive public outdoor recreation and creation of the Provo-Jordan River Parkway.

7. Prior to unveiling its plans, the City had, “no interest in the area” and declined an offer by State Parks to give or sell them the land in 2002. The City held no public hearings or meetings to determine the need or best location for the Complex.

8. More problematically, the proposed site has been identified in at least 8 public planning processes as a site for preservation and restoration as natural open space and/or the site for establishment of a nature education center and urban wildlife refuge. No previous public planning processes had ever identified the site for development of an organized team sports complex.

9. In fact, the proposed site was located outside the corporate boundaries of the City.

10. The City marketed the Prop 5 Facility to residents and voters through media reports, a special bond election open house, and a voter education pamphlet.

11. Specifically, in October 2003, the City published a “Voter Education” pamphlet describing the project purpose, planned location, scope of work, the estimated increased tax liability for residents and businesses to repay the Bond, and anticipated ongoing costs to City residents.

12. The Voter Education pamphlet contains a picture of a baseball player and conveys the inference that the Complex will contain baseball fields.

13. The Voter Education pamphlet states that the purpose of the Complex is to “acquire, construct, furnish, and equip a multi-purpose, regional sports, recreation and education complex.”

14. The Voter Education pamphlet states that the purpose of the Complex is to accommodate the “growing needs of youths and adults participating in organized sports such as soccer, rugby, lacrosse, football, and baseball.”

15. The Voter Education pamphlet states that the purpose of the Complex is to “relieve community and neighborhood parks of continuous high-intensity, multi-use activities that negatively impact park lands.”

16. The Voter Education pamphlet states that the Jordan River “will be preserved as a natural habitat for both plants and wildlife” and that “[a]ccess to the river corridor will be preserved for recreation.”

17. The Voter Education pamphlet states that the Complex will likely include a nature component to support education.

18. The Voter Education pamphlet states that “[f]ee-based, scheduled events (e.g., league and tournament play) will help generate revenue,” implying that the Complex will be free for recreational use by the citizens of Salt Lake City.

19. The Voter Education pamphlet implies that the entire cost of the Project to tax payers will be \$15.3 million, the amount of the Bond sought, plus an estimated \$275,000 in ongoing annual maintenance and operations costs.

20. The Voter Education pamphlet states that the Complex would be located on 212 acres at 2000 North and 2000 West.

21. The Voter Education pamphlet did not disclose that the Complex was to be located on property that the City would have to purchase.

22. The Voter Education pamphlet did not contain information representing the opposition to the Bond. The City did not solicit any opposition viewpoint to be included in the Voter Education Pamphlet and did not disseminate any information on how groups opposing the Bond could have their viewpoint included in the Voter Education Pamphlet.

23. The Voter Education pamphlet failed to inform residents and voters about the existence of another large regional soccer complex that was recently constructed by the City of West Jordan on lands owned by the City. In addition, the pamphlet failed to inform residents and voters that, prior to 2003, the City had created concept plans for multi-sports complexes on two other sites owned by the City.

24. The Voter Education pamphlet did not inform residents that the proposed site for the Complex was located outside the City limits in unincorporated Salt Lake County.

25. The Voter Education pamphlet failed to inform voters that the proposed site for the Complex was located in a known and active floodplain for the Jordan River and Great Salt Lake.

26. The Voter Education pamphlet did not inform voters that development of the Complex at the proposed location along the Jordan River would result in the displacement and elimination of existing passive outdoor recreational uses from the site.

27. The Voter Education pamphlet did not inform residents and voters that the West Salt Lake Master Plan identified the site for the City's regional multi-sport recreational complex at the City-owned landfill located at 2000 West Indiana Av, or alternatively, 2000 West 500 South.

28. On October 13, 2003, the City held a public open house for the Bond election.

29. The viewpoints of opponents to the Bond were not presented at the public open house. The City did not solicit any opposition viewpoint to be included in the public open house and did not disseminate any information on how groups opposing the Bond could have their viewpoint presented at the public open house.

30. The electorate narrowly passed the Prop 5 bond 51.28% in favor to 48.72% against.

31. Since the time of the Prop 5 bond election in 2003, Salt Lake City has repeatedly modified plans for the Regional Sports Complex, and systematically reduced the scope of the Complex without seeking additional voter approval. Specifically:

- a. In 2005, the City modified plans for the Complex and reduced the scope of work to 25-27 soccer play fields and 8 baseball diamonds, covering 190 acres;
- b. In 2007, the City modified plans for the Complex and reduced the scope of work to 17 soccer play fields and 6 baseball diamonds, covering 160 acres;
- c. In 2009, the City modified plans for the Regional Sports Complex and created two phases; phase one reduced the scope of work to 12 soccer play fields and 2

baseball diamonds, covering 142 acres; and phase two added 4 more soccer play fields, 2 more baseball diamonds, covering 160 total acres.

- d. In 2010, the City modified the plans for the Complex to reduce the scope of work in phase one to 16 soccer play fields.

32. Under the City's two phase plan for the Complex, The City's budget of 22.8 million would only cover Phase I, which includes 12 soccer play fields.

33. Phase II, which costs approximately \$21.5M, adds only 4 soccer play fields and 2 baseball diamonds. Phase II also includes construction of an egress road and a bridge crossing over the Jordan River.

34. However, Phase II is not funded, and the City has failed to identify any reliable future source of funding for this part of the project, other than the City's general revenue.

35. The City has never calculated or published information regarding the new total taxpayer liability for the Complex reflecting the increases in the total project costs, property acquisitions, and realistic long-term maintenance and operating costs.

36. During hearings on the project, Salt Lake City provided new and contradictory information regarding the Complex that the public was unaware of before the hearings and could not respond to in their comments. In particular, the City stated that:

- a. The Complex would be an elite tournament facility, not a general use soccer facility for everyday use by youth of Salt Lake City.
- b. Users of the Complex would have to pay to use the fields for all uses, including general recreational or non-league and non-tournament uses.
- c. The City could not fund Phase II construction costs.
- d. The City did not have the expertise to design, manage or operate the Complex, and was planning on Salt Lake County to provide these services.
- e. The City claimed to be in serious negotiations with Salt Lake County to fund Phase II construction costs and long-term maintenance and operating costs for the

project.

- f. The Complex would not likely generate sufficient annual revenue to pay for itself given utilization projections.
- g. The Complex would require a greater annual taxpayer subsidy than originally estimated at the time of the Prop 5 bond election in 2003 to cover operating and maintenance costs.
- h. The City was researching alternative methods to generate additional revenue from the Complex to reduce the anticipated annual taxpayer subsidy, including parking fees and naming rights.
- i. The Complex would not contain any educational component.

37. On February 9, 2010, the City adopted a Bond Parameters Resolution authorizing the issuance of the Bond.

38. The City failed to notice or hold a public hearing on the issuance of the bond prior to the February 9, 2010 meeting.

39. The City failed to publish a “notice of intent to issue bonds” in a newspaper of general circulation prior to the February 9, 2010 meeting.

40. The City failed to publish a “notice of intent to issue bonds” on Utah’s public notice website prior to the February 9, 2010 meeting.

41. In fact, the City has never published a “notice of intent to issue bonds” in either a newspaper of general circulation or Utah’s public notice website.

42. On February 13, 2010, the City published a “notice of bonds to be issued” in local newspapers.

43. The City never published the “notice of bonds to be issued” on the Utah’s legal notice website.

44. On February 13, 2010, and February 20, 2010, the City published notice of a public hearing on the bonds.

45. The “notice of public hearing” and “notice of bonds to be issued” were published as separate notices in local newspapers on February 13, 2010.

46. On March 2, 2010, the City held a public hearing on the Bond.

47. At the hearing, the City failed to disclose that it had already adopted a Bond Parameters Resolution authorizing the issuance of the Bond.

48. As a result of the City’s conduct, Petitioners believe that any issuance of the Bond would be invalid and contrary to law:

- a. Without voter approval, the City has significantly modified and scaled back the Complex from the form originally approved by voters with the passage of the Prop 5 bond.
- b. The costs associated with the Regional Sports Complex have nearly doubled since 2003, while the scope of work has been dramatically reduced to less than half of the original plan.
- c. The proposed Complex site is located within a known floodplain, and is at risk to flooding, but the City does not have a plan to protect the site and the \$44 Million public investment.
- d. The City has not provided a viable nature education, wildlife habitat or outdoor recreation component to replace the values impacted by development of the site into a sports complex as promised at the time of the Prop 5 bond election.
- e. The proposed Complex conflicts with several City policies regarding the environment and sustainability.
- f. Projects funded through municipal bonds should be clearly defined at the time of the bond election, and voters should expect that the bond will lead to completion of the project as described at the time of the election.
- g. Taxpayers have not been adequately educated or informed regarding their tax liability to pay for the sports complex.

- h. The City has not adequately informed taxpayers about the cost of long-term maintenance and operation of the sports complex.
- i. The City's budget has been negatively impacted by spending for preliminary expenses for the sports complex.
- j. The City has misled and confused the public regarding many crucial aspects of the Complex and the Bond.
- k. The City's conduct has created uncertainty regarding the viability of the Prop 5 project that must be clarified by close examination of the public records before any further actions can be taken or approvals granted.
- l. Salt Lake City plans to move forward with public proceedings to grant final approval of the Complex despite the fact that JRRN and the public have not been given full access to the public records for this project.

FIRST CAUSE OF ACTION
(Violation of Utah Code Ann. § 11-14-318)

49. Petitioners reallege and incorporate the preceding paragraphs.

50. Pursuant to Utah Code Ann. §11-14-318, the City is required to provide public notice of its intent to issue bonds once each week for two consecutive weeks in a newspaper having general circulation in the local political subdivision and on the Utah common notice website, with the first publication being not less than 14 days before the public hearing.

51. The City failed to publish proper notice of its intent to issue bonds prior to the Bond Election.

52. In fact, the City has failed to properly publish notice of its intent to issue bonds at any time.

53. Accordingly, Petitioners are entitled to a declaratory judgment that the City violated Utah Code Ann. §11-14-318 and that the Bond is void ab initio. Petitioners are further entitled to an injunction prohibiting the City from issuing the Bond.

SECOND CAUSE OF ACTION
(Violation of Utah Code Ann. § 11-14-201)

54. Petitioners reallege and incorporate the preceding paragraphs.

55. Pursuant to Utah Code Ann. §11-14-201, the City may not issue a bond unless the majority of qualified voters who vote on the bond approve issuance of the bond.

56. However, the ballot proposition voted upon in the Ballot Election is significantly and materially different from the project that the City now proposes to use the Bond for.

57. Specifically, the ballot proposition states that the Bond would be issued for “the purposes of paying the costs of acquiring, constructing, furnishing, and equipping a multi-purpose regional sports, recreation and education complex and related roads, parking and improvements.”

58. However, the final plans for the Complex, as stated by the City, do not result in the construction of a multi-purpose regional sports, recreation and education complex. The City Council approved the concept plan for the Complex on January 12, 2010, and that the approved concept plan differed materially from the scope of work approved by the voters in 2003?)

59. Therefore the City has failed to receive approval from the majority of voters for issuance of the Bond

60. Accordingly, Petitioners are entitled to a declaratory judgment that the City violated Utah Code Ann. §11-14-201 and that the Bond is void ab initio. Petitioners are further entitled to an injunction prohibiting the City from issuing the Bond.

PRAYER FOR RELIEF

WHEREFORE, Petitioners prays for judgment in its favor and against the City as follows:

1. A judgment that the City violated Utah Code Ann. §11-14-318 and that the Bond

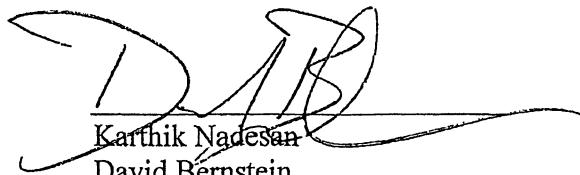
is void ab initio. Petitioners are further entitled to an injunction prohibiting the City from issuing the Bond.

2. A judgment that the City violated Utah Code Ann. §11-14-201 and that the Bond is void ab initio. Petitioners are further entitled to an injunction prohibiting the City from issuing the Bond.

3. For such other and further relief as the Court deems just and equitable under the circumstances.

DATED this 26th day of November, 2010.

NADESAN BECK P.C.

A large, stylized handwritten signature in black ink, appearing to be 'DNB', is written over a horizontal line.

Karthik Nadesan
David Bernstein
Ivan LePendu
Attorneys for Petitioners

Petitioners' Addresses:

Jordan River Restoration Network
c/o Jeff Salt
723 E. Lisonbee Avenue
Salt Lake City, Utah 84106

Nancy L. Saxton
732 East 200 South
Salt Lake City, Utah 84102

Danny Potts
415 South 1000 West
Salt Lake City, Utah 84104

Jan R. Bartlett
732 East 200 South
Salt Lake City, Utah 84102

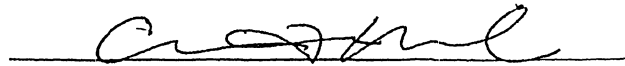
VERIFICATION

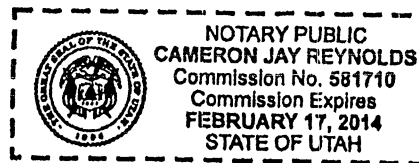
STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

JEFF SALT, on behalf of JORDAN RIVER RESTORATION NETWORK,
acknowledges that he has personal knowledge of the facts alleged in the VERIFIED AMENDED
COMPLAINT and that such facts are accurate and complete to the best of his knowledge and
belief.



The foregoing instrument was acknowledged before me this 26th day of November,
2010, by JEFF SALT.


NOTARY PUBLIC



FILED DISTRICT COURT
Third Judicial District

FEB - 3 2011

SALT LAKE COUNTY
By Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SALT LAKE CITY CORPORATION,	:	DECORUM ORDER
Petitioner,	:	
vs.	:	
All taxpayers, property owners, and	:	CASE NO. 110901081
citizens of Salt Lake City, Utah,	:	
including nonresidents owning	:	
property or subject to taxation therein,	:	
all other persons having or claiming	:	DATE: FEBRUARY 3, 2011
any right, title, or interest in any	:	
property or funds affected by or to be	:	
affected by the general obligation	:	
bonds, of Salt Lake City, to be issued	:	
for a multipurpose regional sports,	:	
recreation and education complex,	:	
and Mark Shurtleff, in his official	:	
capacity as the Attorney General of	:	
the State of Utah,	:	
Defendants.	:	

The Court has scheduled a hearing on February 9, 2011 commencing at 9:30 a.m. for the purpose of hearing the Petition along with the testimony of any defendants wishing to contest the Petition filed by Salt Lake City Corporation ("the City"). The City's Petition requests that the Court determine that (1) the validity of the November 4, 2003

bond election held by Salt Lake City Corporation ("the City") may not be contested in an action brought after December 23, 2003; (2) Utah Code sections 11-14-201 (2007) and 11-14-318 (Supp. 2010) do not apply to the Bond Election; (3) the March 2, 2010 public hearing and related notices are valid under Utah Code section 11-14-318; (4) the Notice of Bonds to be Issued and the Parameters Resolution are valid under Utah Code section 11-14-316; (5) the contest period under Utah Code section 11-14-316 expired on March 15, 2010 and no action brought after that date may contest the issuance of the Bonds; (6) the statements in the Voter Information Pamphlet issued in connection with the Bond Election are not legally binding on the City; (7) when the Final Bond Resolution is duly adopted, it will be a legal, valid, and binding obligation of the City, and enforceable in accordance with its terms; (8) the Bonds to be issued for a multi-purpose regional sports, recreation and education complex will be valid and binding when sold pursuant to the Final Bond Resolution; and (9) the City's proposed expenditure of the Bond proceeds falls within the bounds of the City's discretion in light of the purpose stated in the Proposition 5 ballot language. Any defendants wishing to contest the Petition are required to appear to show cause why the prayers of the Petition should not be granted.

The purposes of this Order are (a) to ensure that the scheduled hearing proceeds in an orderly manner; (b) to provide a mechanism for the defendants to be heard; (c) to protect the proceedings from unnecessary commotion or confusion; and (d) to facilitate appropriate media coverage and public observation.

IT IS THEREFORE ORDERED that the following rules and guidelines for the conduct of the hearing shall be adhered to by all who attend. If regulation of any matter

discussed herein appears to the Court to be unnecessary or to require modification, the Court may rescind or modify that portion of the Decorum Order.

COURTROOM SEATING

There are a finite number of seats in the gallery, ten seats in the jury box, and several chairs at, and immediately behind, each of the two counsel tables in courtroom S-34, where the hearing will be held. The protocol for seating is as follows:

1. The Court will distribute courtroom passes to assure that the individuals described below are able to attend the hearing.
2. Counsel for the City and the Attorney General of the State of Utah or his designee may sit at counsel tables inside the bar railing. Other attorneys may sit on the benches and chairs directly inside the bar railing and directly behind the counsel tables.
3. A total of ten media passes will be issued for seating in the jury box, one of which will be reserved for a pool still photographer. No more than one media pass will be issued to any single media organization for seating in the jury box, except for the media organization supplying the designated pool photographer. The media passes will be available for pick-up in the Administrative Office of the Courts in the Scott M. Matheson Courthouse, N-31, between 1:00 p.m. and 5:00 p.m. on February 8, 2011, or from the Court's Public Information Officer outside Courtroom S-34 commencing at 8:30 a.m. on the morning of the hearing.
4. Passes will be made available to defendants and other members of the public on a first come, first served basis. These passes can be obtained

from the Court's Public Information Officer or other court personnel, who will be stationed at a table outside the courtroom commencing at 8:30 a.m. on February 9, 2011. Defendants seeking to testify must sign in, providing their names and addresses and identifying the basis of their standing: taxpayers; property owners; and citizens of the City including nonresidents owning property, or subject to taxation therein; and all other persons having or claiming any right, title, or interest in any property or funds affected by or to be affected by the Bonds. Each person issued a pass will be provided a pre-set time slot for access to the courtroom. If circumstances warrant it, the Court may continue the hearing to additional dates, but all passes must be obtained on the morning of February 9, 2011.

5. Defendants and observers who have been issued courtroom passes may begin entering the courtroom no earlier than 9:10 a.m., and must be in the courtroom and seated five minutes before the time set for the beginning of the segment of the hearing in which they will testify.
6. Once the hearing begins, no one, except Court personnel, counsel, or representatives of the media, will be allowed to enter or leave the courtroom except during recesses or in case of emergency.

COURT PROCEEDINGS

Although the Court has endeavored to provide adequate time for hearing the Petition and taking the testimony of defendants wishing to contest it, the Court calendar requires it to limit this hearing. To maximize the opportunity for hearing from any

Defendant who contests the Petition, the Court adopts the following procedures to govern the proceedings:

1. The City will be allowed 20 minutes to present its Petition.
2. The Attorney General will be allowed 10 minutes to contest the Petition or to seek the Court's approval to be dismissed as a defendant.
3. Commencing at 10:00 a.m., the Court will hear from any defendant who contests the Petition. Each defendant will be allowed a three minute period in which to address the Court as to matters relevant to its determination of the Petition.
4. The hearing will be conducted in segments of approximately 55 minute intervals, with hourly brief recesses to permit people to leave and enter the courtroom, and a longer lunch recess. At the beginning of each segment, those who intend to testify will be sworn in.
5. Quiet and order among those observing the proceedings shall be maintained at all times. Audible comments of any kind by any spectator during the hearing, or any provocative or uncivil behavior within the courtroom will not be tolerated.
6. Only Court personnel, counsel, and credentialed media representatives are permitted inside the bar railing except when designated defendants are invited to the lectern.
7. No children under age 10 will be allowed in the courtroom. Supervisors of children whose ages might be incompatible with prolonged silence and restricted movements should consider the possible length of the hearing

and make appropriate arrangements.

8. Any electronic devices with wireless transmission capability, such as cellular telephones, handheld PCs, PDAs, or similar devices, shall be turned off before entering the courtroom and shall not be used during the hearing. Failure to comply with this order may result in confiscation of the device and exclusion from the courtroom for the duration of the hearing.
9. The use of electronic devices to record or to broadcast the Court proceedings is forbidden. No person seated in the courtroom, including media representatives, will be permitted to engage in such recording or broadcasting. Failure to comply with this order may result in confiscation of the device, exclusion from the courtroom for the duration of the hearing, and a charge of contempt of court.
10. The proceedings in this case must in no way disrupt operations at the Scott M. Matheson Courthouse. Large gatherings cannot be accommodated in the courthouse.

Any violation of the foregoing, or any other conduct that the Court finds disruptive to the proceedings, will result in an order of temporary or permanent exclusion of the offender or offenders from the proceedings.

GUIDELINES FOR THE MEDIA DURING THE PROCEEDINGS


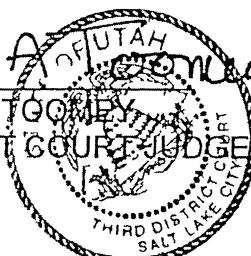
1. A copy of Rule 4-401 of the Code of Judicial Administration, which governs the conduct of the media in reporting court proceedings, is attached to this order. The Court expects that Rule 4-401 will be followed.
2. The Public Information Officer will be the primary contact for media

representatives and for courtroom passes. All complaints, concerns, challenges, and questions from media representatives should be registered with the Public Information Officer. The Court's Judicial Assistants, Case Manager, and Law Clerk will direct inquiries and requests from media representatives to the Public Information Officer.

3. With the sole exception of one pool photographer, no photography will be allowed in the courtroom. No flash photography is permitted.
4. All media interviews shall be conducted outside the courtroom.
5. Each media representative is expected to read and comply with this order.

Any person violating these guidelines will be subject to the discipline of the Court.

Dated this 3 day of Feb, 2011.


KATE A. TOOMEY
DISTRICT COURT JUDGE


Rule 4-401. Media in the courtroom.

Intent:

To establish uniform standards and procedures for conduct and the use of photographic equipment in the courts of the state.

To permit access to the courtroom by the news media while preserving the participants' rights to privacy and a fair proceeding.

Applicability:

This rule applies to the courts of record and not of record.

This rule governs photography and conduct during sessions of court and recesses between sessions.

This rule shall not diminish the authority conferred by statute, rule or common law of the judge to control the conduct of proceedings in the courtroom.

As used in this rule, the term "courtroom" includes the courtroom and areas immediately adjacent to the courtroom.

Statement of the Rule:

(1)(A) Filming, video recording, and audio recording in a trial courtroom are prohibited except to preserve the official record of proceedings. With the permission of the judge presiding at the proceeding, an audio or video signal of proceedings may be transmitted and copied.

(1)(B) Filming, video recording, and audio recording in an appellate courtroom are permitted to preserve the official record of proceedings and as permitted by procedures of those courts. With the permission of the judge presiding at the proceeding, an audio or video signal of proceedings may be transmitted and copied.

(2) Still photography, filming and audio and video recording in the courtroom for ceremonial or court approved public information programs are permitted when arranged through the presiding judge of the court.

(3) No one may photograph a juror or prospective juror before the person is dismissed.

(4) Still photography in a courtroom is prohibited, but it may be permitted in the discretion of the judge presiding at the proceeding. Except on such terms as the judge presiding at the proceeding may prescribe, no one may photograph in the courtroom an exhibit or a document that is not part of the official public record or the face of a person known to the photographer to be a minor. A request to photograph in a courtroom shall be filed with the judge presiding at the proceeding at least 24 hours prior to the proceeding. A judge may permit photography with less than 24 hours notice upon a showing of good cause. In determining whether to permit still photography and, if so, how to regulate it, the judge presiding at the proceeding should consider whether:

(4)(A) photography can be accommodated without distracting the participants;

(4)(B) there is a substantial likelihood photography would jeopardize the right to a fair proceeding; or

(4)(C) the privacy interests of the victim of a crime, a party in a civil case or a witness outweigh the interest of the public in access to a photograph of the person.

(5) Conduct in the courtroom.

(5)(A) The judge presiding at the proceeding may position reporters and equipment in the courtroom to permit reasonable news coverage. Media representatives must share a single photographer.

(5)(B) Photographers shall not use flash or strobe lights. Media representatives shall use normally available courtroom equipment unless the presiding judge and the judge presiding at the proceeding approve modifications, which shall be installed and maintained without public expense.

(5)(C) Proceedings in the courtroom shall not be disrupted. Members of the media in the courtroom shall:

(5)(C)(i) avoid calling attention to themselves;

(5)(C)(ii) not place equipment in or remove equipment from the courtroom while court is in session;

(5)(C)(iii) not make comments in the courtroom during the court proceedings;

(5)(C)(iv) not comment to or within the hearing of the jury or any member thereof at any time before the jury is dismissed;

(5)(C)(v) present a neat appearance in keeping with the dignity of the proceedings;

(5)(C)(vi) not conduct interviews in the courtroom until the proceeding is concluded and the court is recessed;

(5)(c)(vii) not use a camera or tape recorder to conduct interviews in the courtroom; and

(5)(C)(viii) comply with the orders and directives of the court.

(6) In addition to contempt and any other sanctions allowed by law, the court may remove anyone violating these rules from the courtroom and revoke the privileges contained in this rule.

- Respondent's Brief -

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 110901081 by the method and on the date specified.

MAIL: EDWIN P RUTAN II 451 S STATE ST STE 505 SALT LAKE CITY, UT 84111

MAIL: MARK L SHURTLEFF POB 142320 SALT LAKE CITY UT 84114-2320

Date: Feb 3, 2011 KW

Deputy Court Clerk

FEB - 8 2011

By Pf SALT LAKE COUNTY
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SALT LAKE CITY CORPORATION,	:	AMENDED DECORUM ORDER
Petitioner,	:	
vs.	:	
All taxpayers, property owners, and	:	CASE NO. 110901081
citizens of Salt Lake City, Utah,	:	
including nonresidents owning	:	
property or subject to taxation therein,	:	
all other persons having or claiming	:	DATE: FEBRUARY 8, 2011
any right, title, or interest in any	:	
property or funds affected by or to be	:	
affected by the general obligation	:	
bonds, of Salt Lake City, to be issued	:	
for a multipurpose regional sports,	:	
recreation and education complex,	:	
and Mark Shurtleff, in his official	:	
capacity as the Attorney General of	:	
the State of Utah,	:	
Defendants.	:	

This Amended Decorum Order shall supplement the Decorum Order entered February 3, 2011. Since that order was entered, the Court has received a Motion for Order for Mailing of Notice and/or Publication of Notice in *Salt Lake Tribune* and *Deseret News*, and the Court will hear that motion at the beginning of the hearing

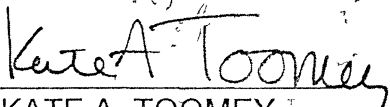
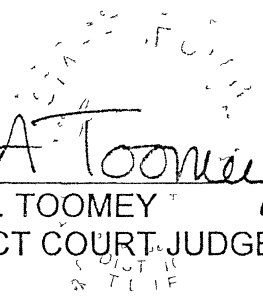
scheduled on February 9, 2011 commencing at 9:30 a.m., and will determine whether the hearing on the Petition can proceed on that date as scheduled.

In addition, on February 4, the Court received a Motion to Dismiss Attorney General as a Defendant, along with a memorandum in support thereof..

Finally, yesterday afternoon, the Petitioner filed an Amended Petition to Establish Validity of Bonds, which may affect the scope of the Petition hearing. The Court will address this issue before commencing any hearing on the Petition.

Because of the foregoing, in the event that the Court proceeds with hearing the Petition, some adjustments are warranted in the time frames established in the initial Decorum Order. Accordingly, the Court has determined that it will address the motion and other matters for a period not to exceed one hour, and that if the hearing on the Petition goes forward, the City will be allowed 20 minutes to present its Petition, the Attorney General will be allowed 10 minutes to seek the Court's approval to be dismissed as a defendant, and commencing at 11.00 a.m., the Court will hear from any defendant who contests the Petition. All other provisions of the initial Decorum Order shall remain in full force and effect.

Dated this 8 day of Feb, 2011.


KATE A. TOOMEY
DISTRICT COURT JUDGE


CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 110901081 by the method and on the date specified.

FAX: PERRI A BABALIS (801)366-0378
FAX: DAVID M BERNSTEIN (801)569-5149
FAX: IVAN W LEPENDU (801)534-1948
FAX: KARTHIK NADESAN (801)534-1948
FAX: BRYCE H PETTEY (801)366-0378
FAX: EDWIN P RUTAN II (801)535-7640
FAX: MARK L SHURTLEFF (801)538-1121

Date: Feb 8, 2011

Pat Jones
Deputy Court Clerk

All taxpayers, property owners, and citizens of Salt Lake City, Utah, including nonresidents owning property or subject to taxation therein, all other persons having or claiming any right, title, or interest in any property or funds affected by or to be affected by the general obligation bonds, of Salt Lake City, to be issued for a multipurpose regional sports, recreation and education complex, and Mark Shurtleff, in his official capacity as the Attorney General of the State of Utah,

Defendants.

On February 9, 2011, this Court conducted a bond validation hearing pursuant to Utah Code section 11-30-4 (2007). This Court issued Findings of Fact and Conclusions of Law on March 30, 2011. Those Findings of Fact and Conclusions of Law are incorporated herein by reference and provide the bases for this Order.

This Court HEREBY ORDERS, ADJUDGES AND DECREES

1. Resolution 12 of 2010 and the Final Bond Resolution, attached as an exhibit to Resolution 12, (when adopted) are legal, valid, and binding obligations of Salt Lake City Corporation (the "City") and are enforceable in accordance with their terms.
2. No further contest to the 2003 bond election is permitted under Utah Code section 11-14-12 (1991) (currently section 11-14-208(2) (2007)).
3. The City Council is not bound by the description of implementation of the regional sports, recreation, and education complex (the "Project") in the voter's information pamphlet. The City Council has discretion on how to spend bond proceeds. The purpose of the bond Project is materially the same in the voter pamphlet as in the Final Bond Resolution.
- ~~4. [CITY'S PROPOSAL]: The City, pursuant to notice properly given, held on~~
March 2, 2010 the public hearing required by Utah Code section 11-14-318 (Supp. 2010), and the notice of intent to issue bonds was validly given on February 11, February 13, and February 20, 2010. *RJA.*
4. ~~[NADESAN'S PROPOSAL]:~~ *RA.* Notice of the March 2, 2010 City Council meeting and notice of intent to issue bonds were properly noticed.

5. The \$15,300,000 of bonds the City intends to issue to fund the building of a multi-purpose regional sports, recreation and education complex (the "Bonds"), when executed and delivered, shall be valid and legally binding obligations of the City, are secured by the full faith and credit of the City, and are in compliance with the laws of the State of Utah.

6. This Court permanently enjoins Jordan River Restoration Network v. Salt Lake City Corporation, Civil No. 100919202, to the extent that such action contests the validity of the Bonds or any other matter adjudicated or that might have been adjudicated in this proceeding.


7 This injunction does not apply to any claims in Jordan River Restoration Network v. Salt Lake City Corporation, Civil No. 100919202, that were not and could not have been adjudicated in this proceeding.

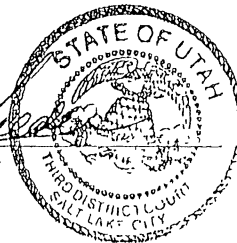
Accordingly, this Court GRANTS judgment in favor of the City validating the Bonds at issue. Furthermore, this Court PERMANENTLY ENJOINS any action contesting the validity of the Bonds "or any other matter adjudicated or that might have been adjudicated in the proceedings." Utah Code § 11-30-11 (2007).

Any party appearing at the hearing may appeal this decision within ten days of the date of entry. Utah Code § 10-30-10 (2007).

IT IS SO ORDERED this 20th day of June, 2011.

BY THE COURT


Honorable Robert Hilder
Presiding Judge
Third District Court



MAR 30 2011

SALT LAKE COUNTY

By 

Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT, SALT LAKE COUNTY
STATE OF UTAH

SALT LAKE CITY CORPORATION,
located in Salt Lake County,
Utah, a municipal corporation and
a political subdivision of the
State of Utah,

Petitioner,

vs.

All taxpayers, property owners,
and citizens of Salt Lake City,
Utah, including nonresidents
owning property or subject to
taxation therein, all other
persons having or claiming any
right, title or interest in any
property or funds affected by or
to be affected by the general
obligation bonds, of Salt Lake
City, to be issued for a
multipurpose regional sports,
recreation and education complex,
and Mark Shurtleff, in his
official capacity as the Attorney
General of the State of Utah,

Defendants.

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

Case No. 110901081

Judge Robert K. Hilder

This matter is before the Court on the Petitioner's Amended Petition
to Establish Validity of Bonds (the "Petition"), filed February 7, 2011.¹

¹ The City filed its initial Petition on January 13, 2011. A petition may be amended any time prior to the hearing and does not require republication of the Court's order absent a change in the issuer or a substantial change in the use of the proceeds or repayment of the bonds. Utah Code Ann. §§ 11-30-3(5) and -3(6) (1987).

The City filed pursuant to the Utah Bond Validation Act, Utah Code Ann. § 11-30-1, et seq. (1987), moving the Court to confirm the legality of Proposition 5 (the "Bond") approved by the voters in 2003. The Act provides that: "A public body may, at any time after it has authorized the issuance of bonds . . . but before the issuance and delivery of any such bonds . . . file a petition to establish the validity of such bonds." § 11-30-3(1).

Pursuant to the Act, the Court held a public hearing on February 9, 2011 to receive the testimony and argument of any defendant who wished to show cause why the Petition should not be granted. § 11-30-4. Several defendants testified in opposition to Salt Lake City Corporation's ("City") Petition. Counsel representing approximately fifteen individuals called and examined witnesses, and cross-examined other witnesses/defendants,² and several unrepresented defendants testified and questioned witnesses.

The issue before the Court is narrow: whether the City's bond election and subsequent steps taken to issue the Bond are valid under the law. Several parties who testified at the February 9 hearing opined on matters outside this issue. In an abundance of caution the Court heard all

² Karthik Nadesan, David Bernstein and Ivan LePendu of Nadesan Beck P.C. represent Defendants Danny Potts, Nancy L. Saxton, Jan R. Bartlett, Bob Keith Johnson, Karen Potts, Eric Harvey, Kristine Vickers, Sherry McLaughlin, James W. Cameron, David Kurz, M. Ray Kingston, Catherine Bullock, Ashtora, June S. Taylor, Jeremy King, and Jordan River Restoration Network. The Court uses the term "defendants" rather than "respondents," because that is the statutory designation.

who wished to testify, whether or not the testimony went to the issue before this Court. The Court notes the courtesy of the City's counsel, who graciously acquiesced in permitting this latitude, despite the City's motions in limine that were reasonably designed to keep the hearing within the bounds set forth in the statute.

POST HEARING SUBMISSIONS

There was an unanticipated consequence resulting from the Court's latitude at the hearing. The Court acknowledges that it granted leave to defendants to submit a written closing argument. This was permitted because, late in the hearing, after evidence was taken, counsel for the defendants identified above presented the Court with a substantial brief accompanied by voluminous exhibits. Because counsel agreed to a very short oral closing, the Court accepted the brief as closing argument, granted leave to the City to file a written closing, and also agreed to accept written arguments from any defendant who wished to submit a memorandum.

Several defendants made submissions, but there was apparently misunderstanding about the permitted scope of the submissions, and some defendants attempted to file additional purported evidence. Others requested more time to gather such evidence. That is not an option. The parties' rested their cases on February 9, 2011, and no more evidence can be received. The Court issued a Minute Entry explaining the limitations on February 14, 2011, but some parties subsequently filed objections to the Minute Entry. Those objections are overruled. They

are concerned with substance, not form, and the Court is not free at this time to consider anything other than evidence already in the record, and argument.

Ultimately, almost everything the Court anticipated, and more, was filed by February 22, 2011, but on that date the represented defendants submitted a "Reply." That is not an appropriate filing in closing. The City objected to that filing on March 4, 2011, and the objection is well-taken. Nevertheless, the Court read the Reply and it contains nothing that squarely addresses the narrow issue the Court must address, but the Court addresses all relevant issues below. What the Court cannot consider, and has not read, are documents submitted to supplement the evidentiary record, but that is what defendants urge the Court to accept.³

On March 2, 2011, the City objected to additional exhibits submitted by Raymond Wheeler. The Court sustains that objection. As it has already said, the Court is not free to accept additional evidence at this stage of the proceedings. The Court also received one objection to the Order it signed on February 28, 2011, denying certain defendants' motion for order to serve all defendants by mail, or by publication in The Salt Lake Tribune and The Deseret News. The motion was heard as the first order of business on February 9, 2011, and

³ The Court has considered the Voter Information Pamphlet (defendants' Exhibit J) over the City's objection, because it could be relevant to the claims of misinformation, deceit or even fraud, but as explained below, the document does not, in fact, change the outcome.

denied from the bench. The objection is to content, and not to the form of the order, and it is overruled.

Filings have continued through March 15, 2011, and the Court has considered all admissible testimony and exhibits, and all oral and written argument. The Court now enters its:

FINDINGS OF FACT

The Bond Election

1. As a local governing body, the City may issue bonds for "recreational facilities of every kind, including without limitation, athletic and play facilities, playgrounds, athletic fields, gymnasiums, public baths, swimming pools, camps, parks, picnic grounds, fairgrounds, golf courses, zoos, boating facilities, tennis courts, auditoriums, stadiums, arenas, and theaters[.]" Utah Code Ann. § 11-14-103(1)(b)(v) (2007).
2. At the time of the 2003 bond election, a governing body wishing to issue a bond was required to approve a resolution at least 30 days prior to the election. The resolution must include the purpose for the bond, the maximum amount of the bond, and the maximum number of years from the issue date of the bond to maturity. § 11-14-2 (2002).
3. On September 9, 2003, the Salt Lake City Council adopted Resolution 39, Proposition Number 5, authorizing a general obligation bond election not to exceed \$15,300,000 to pay for "acquiring, constructing, furnishing and equipping a multi-purpose regional

sports, recreation and education complex and related roads, parking and improvements." It also provided for the maximum amount of the bonds and the maximum number of years from the issue date of the bonds to maturity.

4. Resolution 39, City Proposition Number 5 was adopted by the Council on September 23, 2003, in the following language:

CITY PROPOSITION NUMBER 5

(Regional Sports, Recreation and Education Complex)

Shall Salt Lake City, Utah, be authorized to issue and sell general obligation bonds of the City in an amount not to exceed Fifteen Million Three Hundred Thousand Dollars (\$15,300,000) and to be due and payable in not to exceed twenty (20) years from the date or dates of the bonds for the purpose of paying the costs of acquiring, constructing, furnishing and equipping a multi-purpose regional sports, recreation and education complex and related roads, parking and improvements?

5. Resolution No. 45 of 2003, adopted October 7, 2003, changed procedures for canvassing votes and amended the list of polling places, but the text of Proposition Number 5 was unchanged.
6. Section 18 of Resolution 39 (2003) sets forth the City's covenant that the City could issue the Bond only if and when it receives a private pledge or pledges totaling \$7,500,000. The pledge was secured in 2007 (see Gift Agreement dated June 8, 2007).
7. The Voter Information Pamphlet described the Proposition as "212 acres [located] at 2000 North and 2000 West," for the purpose of construction of "a multi-purpose regional sports, recreation, and

education complex." Both the cost and the commitment to secure \$7.5 million from other sources to augment the cost were stated correctly. The Pamphlet referenced needs of youths and adults, and plans to accommodate "organized sports such as soccer, rugby, lacrosse, football, and baseball."

8. The election was held on November 4, 2003, and the Board of Canvassers declared the Bond passed on November 10.
9. The 40-day period to contest the election results ended on December 22, 2003 with no challenges. "[N]o bond election shall be set aside or held invalid unless such a complaint is filed within the period prescribed in this section." § 11-14-12 (1991).
10. Currently, the City Council plans to build on 160 acres near the Jordan River. The project will include 15 multi-use athletic fields and one championship multi-use field. There will apparently be no baseball facilities at this time. Other facilities will include parking, roads, restrooms, concession areas, maintenance buildings and administration buildings. Tentatively, the fields will be available 60% for competitions, 30% for recreation and 10% for tournaments. There will be an educational component. The City will perform mitigation measures on the wetlands pursuant to the Clean Water Act. The project's plan includes a buffer between the athletic fields and the Jordan River, which may be paid in part from the Bond proceeds.

11. Based on the testimony at the hearing, particularly from Richard Graham, City Director of Public Services, the Court finds that there is neither mystery nor deceit in the fact that the site and the specifics of the facility are not precisely as originally discussed. At the time of the election other sites were under consideration, but the City had not chosen the final project site, so the City could not know the details of "constructability" (e.g. composition of soil, wetlands, engineering studies). The price changes from 2003 until now are explained by many typical factors, but they include in this case the fact that the City did not consider the cost of flood prevention. As explained in the Conclusions of Law, the undisputed fact that the plan has changed in scope and location does not serve, without more, to invalid the Bond.

The Bonding Act

12. The Local Government Bonding Act, § 11-14-1, et seq., governs the issuance of bonds.
13. Prior to issuing bonds, the City must provide public notice of its intent to issue bonds and hold a public meeting to receive input on the issuance of the bond and any potential economic impacts. § 11-14-318 (2009).
14. The notice must identify: the purpose for the issuance of the bond; the maximum principal amount of the bond to be issued; taxes to be pledged for repayment of the bond; and the time, place and location of the public hearing. § 11-14-318(2)(b).

15. The City Council must publish the notice: (a) once per week for two consecutive weeks in a newspaper of general circulation, with the first publication not less than 14 days before the hearing and (b) on the Utah Public Notice Website not less than 14 days before the hearing. § 11-14-318(2) (a).
16. Under Utah's Open and Public Meetings Act, the City Council must give not less than 24-hour notice of the meeting, including the agenda, date, time and place. Notice must be posted at the City Council's office, the Utah Public Notice website, and in a newspaper of general circulation. § 52-4-202 (2009).

The February 9, 2010 Hearing

17. On February 9, 2010, the City Council held a public hearing to receive input on the issuance of the Bond and any potential economic impacts.
18. On February 5, the City Council posted a Notice of Public Hearing at its principal office, published the Notice in the Salt Lake Tribune and Deseret News, and published the Notice on the Utah Public Notice website.
19. At the hearing, the City Council adopted the Initial Bond Resolution (Resolution 12) authorizing the issuance of the Bond. The Resolution established the maximum aggregate principal, the maximum number of years to mature, the maximum interest rate, the maximum discount, and notes that in 2007 Real Salt Lake agreed to gift \$7,500,000 to the City.

20. The City Council introduced a draft of the Final Bond Resolution.⁴ It provides that, "\$15,300,000 principal amount of general obligation bonds (the 'Proposition No. 5 Bonds') was authorized for the purpose of paying the costs of acquiring, constructing, furnishing and equipping a multi-purpose regional sports, recreation and education complex and related roads, parking and improvements ('the Project')."

The March 2, 2010 Hearing

21. The City Council held a public hearing on March 2, 2010 to gather public feedback regarding the Initial Bond Resolution.
22. On February 11, the City Council posted a Notice of Public Hearing at its principal office and on the Utah Public Notice website. The notice on the website contained an error. The titles of two hearings were switched. However, both hearings were scheduled in the same location and at the same time. Such notice effectively alerted persons interested in the Initial Bond Resolution to the fact and location of the hearing.
23. On February 13 and 20, the City Council published a Notice of Public Hearing in the Salt Lake Tribune and the Deseret News. The Notice identified the requirements of Section 11-14-318(2)(b), including the purpose for the issuance of bonds; the maximum principal; the taxes; and the time, place, location, and purpose of the hearing.

⁴ The Final Bond Resolution is not yet adopted. It is necessary before the City may issue a bond.

The December 7, 2010 Hearing

24. On December 7, 2010, the City Council held another public hearing on the issuance of the Bond and to gather input regarding potential economic impacts.
25. On November 18, the City Council published a Notice of Public Hearing (titled "Salt Lake City Council Public Hearing for the Regional Sports Complex") on Utah's Public Notice website.
26. On November 22 and 29, the City Council published a Notice of Public Hearing in the Salt Lake Tribune and the Deseret News. The Notice identified the requirements of Section 11-14-318(2)(b), including the purpose for the issuance of bonds; the maximum principal; the taxes; and the time, place, location and purpose of the hearing.

The Bond Validation Act

27. The Utah Bond Validation Act, § 11-30-1, *et seq.*, provides the process by which the City may petition the Court to establish the legality of a bond. Subsequent to authorizing the issuance of a bond but before the actual issuance, the City may file a petition with the district court in the county of its principal office to establish the validity of a bond. § 11-30-3(1) (1987).
28. The Petition shall name as defendants "all taxpayers, property owners, citizens of the public body, including nonresidents owning property or subject to taxation therein, all other persons having or claiming any right, title, or interest in any property or funds affected by or to be affected by the bonds, all parties to any

contract or instrument which is party of the validation proceeding, and, pursuant to Section 11-30-6, either the attorney general or the county attorney of the county in which the largest expenditure of proceeds of the bond is expected to be made." § 11-30-3(2).

29. The Petition must include: (a) the statutory authority under which the petition is filed, (b) the statutory authority under which the City authorized the issuance of the bond, (c) the proceedings by which the City authorized the issuance of the bonds, (d) the election and results, (e) the purpose of the bond, and (f) the source of funds from which the bonds are to be paid. § 11-30-3.

30. The allegations of the City's Amended Petition contain all of the required information. It states:

- The Petition is governed by the Bond Validation Act, § 11-30-1, *et seq.*
- The issuing of bonds is governed by the Local Government Bonding Act, § 11-14-1, *et seq.*
- On February 9, 2010, the City Council adopted the Initial Bond Resolution, authorizing issuance of the Bond.
- On November 4, 2003, voters approved Proposition 5.
- On November 10, 2003, the Board of Canvassers declared Proposition 5 passed.
- The purpose of the Bond is "paying the costs of acquiring, constructing, furnishing and equipping a multi-purpose regional

sports, recreation and education complex and related roads, parking and improvements."

- The source of funds will be general obligations of the City and the City's taxing power.

31. Upon receiving the Petition, the Court is required to enter an order as notice to defendants requiring them to appear and show cause why the petition should not be granted. The hearing must be scheduled between 20 and 30 days from the date of the order. § 11-30-4. The Court must publish the order once per week for three weeks "in a newspaper published or of general circulation within the boundaries of the public body" and on www.utahlegals.com. §§ 11-30-5(1) and 45-1-101. By publication of the order, all defendants are considered to have been served and are considered parties to the proceedings. § 11-30-5(3).
32. On January 14, 2011, the Court issued the required Notice, and caused it to be published in The Intermountain Commercial Record, where the Notice was published daily from January 18, 2001 through February 1, 2011, inclusive. The Intermountain Commercial record is a newspaper of general circulation, and publication therein meets the statutory publication requirement. The notice was also published on UtahLegals.com. While there were vigorous challenges to the adequacy of the notice given, the Court has entered its separate Order rejecting the challenges.

33. Prior to the scheduled hearing date of February 9, 2011, defendants represented by the law firm of Nardesan Beck filed a Motion for an Order for Mailing of Notice and/or Publication in Salt Lake Tribune and Deseret News, arguing that the publication ordered by the Court was inadequate. The Court heard argument on the motion at the commencement of the evidentiary hearing, and issued a bench ruling denying the Motion and determining that the Notice was sufficient. The Court entered the Order provided by the City on February 28, 2011.

The Role of the Attorney General

34. The Bond Validation Act requires that the Utah Attorney General be named a defendant. § 11-30-3(2).
35. If the Attorney General believes the petition is defective, insufficient or untrue, or if a reasonable question exists as to the validity of the bond, the Attorney General shall contest the petition. If neither condition exists or if the Attorney General feels that another party will competently contest the petition, the Attorney General may request to be dismissed. § 11-30-6.
36. The City named Mark Shurtleff, Utah Attorney General, as a defendant.
37. At the February 9, 2011 hearing, Bryce Pettey, Assistant Utah Attorney General, moved the Court to dismiss the Attorney General. Mr. Petty testified that the Attorney General did not contest the City's Petition and believes that others can adequately contest the

Petition. In addition, the Attorney General outlined his position in a memorandum filed before the hearing, explaining why he saw no defect in the procedure that would prevent the Court from finding the bond valid.

38. The Court granted the unopposed motion and dismissed the Attorney General as a defendant. The Order of dismissal was signed on February 18, 2011.

Bond Validation

39. The Court is required to hold a hearing on the Petition, determine questions of law and fact, and enter judgment within ten days to the extent possible and practicable. § 11-30-7. The last submissions received by the Court are date stamped March 15, 2011. The Court would not be surprised to see more filings, but there is no legal or other basis to prolong this proceeding, and these Findings and Conclusions are issued eleven business days after the last submission; the earliest date practicable in light of the ongoing submissions that have been filed. Accordingly, the Court finds that issuance of its decision this date is in compliance with § 11-30-7.
40. The Court may not fail to declare the bond valid unless it finds substantial defects or material errors and omissions in the issuance of the bond. Matters of form shall be disregarded. § 11-30-9.
41. Any party appearing at the hearing may appeal this decision within ten days of the date of its entry. § 11-30-10.

42. If no appeal is made, this judgment shall become binding and conclusive as to the validity of the Bond and shall constitute a permanent injunction against further contest to the validity of the Bond or any other matter adjudicated or that might have been adjudicated. § 11-30-11(1).

Based on the factual findings and recitation of statutory legal requirements above, the Court now enters its:

CONCLUSIONS OF LAW

1. The arguments of defendants, including specifically the zealous submissions of the represented defendants notwithstanding, the issues before the Court are narrow, they are defined by statute, and they are not subject to much of the law cited by defendants, including law governing zoning and land use decisions.
2. What the City must establish is specifically set forth in the applicable statutes, which have been cited and quoted at length, above. The court is not free to import other standards or requirements.
3. The City must prove the allegations of its petition by a preponderance of the evidence. Defendants arguments to the contrary are incorrect. In fact, the only application of the clear and convincing standard would be to defendants generally stated, but manifestly unsupported, allegations of fraud in the inducement.

4. The defendants complaints about the procedure, lack of discovery, short time frames for hearing and decision, are all decided by statute, and outside the Court's discretion. This Court has done all it can to hear all views, but the legal reality is that much of what defendants-who may also be described as opponents of both the bond and/or the specific present sports, recreation, and education complex and location-has no place in this proceeding. Some of the concerns, e.g. environmental concerns, may yet find an effective voice in another forum, but the statute under which this Court must proceed does not provide any such forum.
5. The Court concludes that this bond validation action is not even a close case. The specific determinations the City requests are included below as topic headings to the Court's conclusions:
6. The Initial Bond Resolution and Final Bond Resolution (when approved) are legal, valid and binding under the Bond Validation Act.

CONCLUSION: This determination is basically an issue of law. Some defendants challenge the City's claim that it can obtain a validation ruling, because the Initial Bond Resolution does not fully authorize the issuance of the Bonds. As the City points out, they have followed common and accepted practice. The Initial Bond Resolution contemplates the ultimate resolution that will set the actual sale terms for the bonds, and it is an action of significant legal substance. The Local Bonding Act provides that the initial resolution is sufficiently final to determine legal rights. § 11-14316(3). The

sequence followed here is legal, and practically necessary to effectuate the bond sale.

7. The period for contesting the validity of the bond election expired on December 23, 2003. No party contested the election. § 11-14-12 (1991) (currently § 11-14-208(2)).

CONCLUSION: This point is undisputed.

8. Utah Code Section 11-14-201 (2007), requiring the City to approve a resolution 75 days before the election, did not exist at the time of the election and does not apply here.

CONCLUSION: Utah Code Section 11-14-318(1)(b)(i) (2009), requiring the City to provide notice of its intent to issue bonds between 30 and 5 days before the notice of election did not exist at time of the election and does not apply here.

9. The City Council is not bound by the description of implementation of the project in the voter's pamphlet.

CONCLUSION: The City is correct. As the Utah Supreme Court determined in Ricker v. Board of Education of Millard County School District, 396 P.2d 416,419 (Utah 1964), "it is the notice published pursuant to statute which binds the [government entity], and . . . collateral statements or explanatory materials do not." The Voter Information Pamphlet is an explanatory document. The City is not bound by its statements, but even it is, the Court concludes below (see section 10 following) that there is no substantial difference, no deceit or

misleading statements, and no present plan that does not fall within the City's bounds of discretion.

10. The City Council has discretion on how to spend bond proceeds.

CONCLUSION: The City is also correct on this claim. Utah Code Ann. § 11-14-2(c) provides: "The purpose may be stated in general terms and need not specify the particular projects for which the bonds are to be issued or the specific amount of bond proceeds to be expended for each project." In Ricker v. Board of Ed., 396 P.2d 416 (Utah 1964), the Utah Supreme Court addressed a case where the school board's bond description was to spend \$1.25M on high schools and \$75K on elementary school. After the bond passed, bids indicated high school construction would be more expensive, so fewer dollars were available for the elementary school. The court deferred to the school board and held the election valid. The Court held that the law does not favor limitations on powers of an administrative body, but gives it a "free hand to function within the sphere of its responsibilities" and "retains its prerogative of using its best judgment as to what course will prove to be the greatest advantage in serving the interests of the district in the long run. And any representations made by it or its members should not be regarded as restricting that prerogative unless it clearly and unequivocally appears that the Board has made a binding commitment or so acted that justice and equity would require it to follow some predetermined course of action." In this case the passage of time and unanticipated

construction costs require a more modest project, but the present proposal is well within the City's discretion.

11. Enjoin any contests to the validity of the Bond. §§ 11-30-8 and 11-30-2(9); in particular, enjoin Jordan River Restoration Network v. Salt Lake City Corp., Salt Lake City Council, case number 100919202.

CONCLUSION: Utah Code Ann. § 11-30-11 provides that final judgment in this matter constitutes a permanent injunction against the institution by any person of any action contesting the validity of the bonds "or any other matter adjudicated or that could have been adjudicated in this proceeding." The Court is not otherwise addressing injunction in this case to permit fair adjudication of other cases that may assert claims that were not and could not have been adjudicated herein, if in fact there are any such remaining claims. Whether or not such claims exist was not fully addressed in this expedited proceeding.

12. Bonds issued prior to 2006 are valid unless challenged by May 1, 2006. § 11-14-405.

CONCLUSION: The statute is clear on this point and the Court so concludes.

13. Notice of the March 2, 2010 City Council meeting and notice of intent to issue Bonds were properly noticed. § 11-14-318.

CONCLUSION: The defendants argue that the City's error in publishing the title of the March 2009 meeting as "Notice of Public Hearing" instead of "Notice of Intent to Issue Bonds" was prejudicial because it was unlikely to apprise an interested party of the meeting's

purpose. The Court concludes that there is no requirement in the controlling statute, Utah Code Ann. § 11-14-318, that the title of the notice include "Notice of Intent to Issue Bonds," or any other specific requirement. When the legislature deems the title important, it states its direction clearly. See, e.g. Utah Code Ann. § 11-14-316(2). Second, the newspaper notices had several headings clearly stating that the meeting would be about the bond. Parties reading the headline would obviously see the immediately following reference to the bond.

Both the foregoing alleged errors, and those referenced in Finding of Fact No. 22, are of no ultimate legal consequence in this action. The Court concludes that the errors complained of in this case are the mere matters of form that the legislature referenced in Utah Code Ann. § 11-30-9: "No court may fail to declare bonds valid under this chapter unless the court finds substantial defects or material errors and omissions in the issuance of the bonds. Matters of form shall be disregarded." (emphasis added).

14. The purpose of the Bond project is materially the same in the voter pamphlet as in the Final Bond Resolution.

CONCLUSION: For the reasons stated in the factual findings, and to some extent in Conclusions No. 9 and 10, the Court concludes that this point has been established.

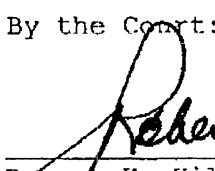
15. The City's has met its burden to establish every necessary allegation of its Amended Petition, and is entitled to an Order from this Court

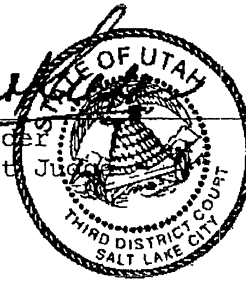
determining that the Bonds proposed by 2003 City Proposition Number 5 and passed at the November 2003 election are valid, as provided for in Utah Code Ann. § 11-20-1, *et seq.*

16. Counsel for the City shall prepare an appropriate Order consistent with these Findings of Fact and Conclusions of Law, which Order may include the injunction discussed at Conclusion No. 11, pursuant to Utah Code Ann. § 11-30-11.

DATED this 30th day of March, 2011.

By the Court:


Robert K. Hilder
District Court Judge



Title/Chapter/Section:

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Declaration of Rights

Section Section 7 [Due process of law.]

Article I, Section 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

No History for Constitution

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UTAH STATE LEGIS

Title/Chapter/Section:

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[Section 1](#) [Inherent and inalienable rights.]**Article I, Section 1. [Inherent and inalienable rights.]**

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

No History for Constitution

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Utah Code

Title 10 Utah Municipal Code

Chapter 9a Municipal Land Use, Development, and Management Act

Section 406 Public uses to conform to general plan.

10-9a-406. Public uses to conform to general plan.

After the legislative body has adopted a general plan, no street, park, or other public way, ground, place, or space, no publicly owned building or structure, and no public utility, whether publicly or privately owned, may be constructed or authorized until and unless it conforms to the current general plan.

Renumbered and Amended by Chapter 254, 2005 General Session

Title/Chapter/Section:

[Go To](#)[Search Code by Key Word](#)[<< Previous Section \(11-14-315\)](#)[Next Section \(11-14-317\) >>](#)[Utah](#)[Code](#)[Title 11](#) Cities, Counties, and Local Taxing Units[Chapter](#)
[14](#) Local Government Bonding Act[Section](#)
[316](#) Publication of notice, resolution, or other proceeding -- Contest.**11-14-316. Publication of notice, resolution, or other proceeding -- Contest.**

(1) The governing body of any local political subdivision may provide for the publication of any resolution or other proceeding adopted under this chapter:

- (a) in a newspaper having general circulation in the local political subdivision; and
- (b) as required in Section [45-1-101](#).

(2) When publication involves a resolution or other proceeding providing for the issuance of bonds, the governing body may, in lieu of publishing the entire resolution or other proceeding, publish a notice of bonds to be issued, titled as such, containing:

- (a) the name of the issuer;
- (b) the purpose of the issue;
- (c) the type of bonds and the maximum principal amount which may be issued;
- (d) the maximum number of years over which the bonds may mature;
- (e) the maximum interest rate which the bonds may bear, if any;
- (f) the maximum discount from par, expressed as a percentage of principal amount, at which the bonds may be sold;
- (g) a general description of the security pledged for repayment of the bonds; and
- (h) the times and place where a copy of the resolution or other proceeding may be examined, which shall be:
 - (i) at an office of the issuer;
 - (ii) identified in the notice;
 - (iii) during regular business hours of the issuer as described in the notice; and
 - (iv) for a period of at least 30 days after the publication of the notice.

(3) For a period of 30 days after the publication, any person in interest may contest:

- (a) the legality of such resolution or proceeding;
- (b) any bonds which may be authorized by such resolution or proceeding; or
- (c) any provisions made for the security and payment of the bonds.

(4) A person shall contest the matters set forth in Subsection (3) by filing a verified written complaint in the district court of the county in which he resides within the 30-day period.

(5) After the 30-day period, no person may contest the regularity, formality, or legality of the resolution or proceeding for any reason.

Amended by Chapter 145, 2011 General Session

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Title/Chapter/Section:

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Local Government Bonding Act

[Section](#)[318](#)

Public hearing required.

11-14-318. Public hearing required.

(1) Before issuing bonds authorized under this chapter, a local political subdivision shall:

(a) in accordance with Subsection (2), provide public notice of the local political subdivision's intent to issue bonds;
and

(b) hold a public hearing:

(i) if an election is required under this chapter:

(A) no sooner than 30 days before the day on which the notice of election is published under Section [11-14-202](#); and(B) no later than five business days before the day on which the notice of election is published under Section [11-14-202](#); and

(ii) to receive input from the public with respect to:

(A) the issuance of the bonds; and

(B) the potential economic impact that the improvement, facility, or property for which the bonds pay all or part of the cost will have on the private sector.

(2) A local political subdivision shall:

(a) publish the notice required by Subsection (1)(a):

(i) once each week for two consecutive weeks in the official newspaper described in Section [11-14-316](#) with the first publication being not less than 14 days before the public hearing required by Subsection (1)(b); and(ii) on the Utah Public Notice Website, created under Section [63F-1-701](#), no less than 14 days before the public hearing required by Subsection (1)(b); and

(b) ensure that the notice:

(i) identifies:

(A) the purpose for the issuance of the bonds;

(B) the maximum principal amount of the bonds to be issued;

(C) the taxes, if any, proposed to be pledged for repayment of the bonds; and

(D) the time, place, and location of the public hearing; and

(ii) informs the public that the public hearing will be held for the purposes described in Subsection (1)(b)(ii).

Amended by Chapter 5, 2009 Special Session 1

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Title/Chapter/Section:

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[30](#) Utah Bond Validation Act[Section](#)
[2](#) Definitions.**11-30-2. Definitions.**

As used in this chapter:

- (1) "Attorney general" means the attorney general of the state or one of his assistants.
- (2) "Bonds" means any evidence or contract of indebtedness that is issued or authorized by a public body, including, without limitation, bonds, refunding bonds, advance refunding bonds, bond anticipation notes, tax anticipation notes, notes, certificates of indebtedness, warrants, commercial paper, contracts, and leases, whether they are general obligations of the issuing public body or are payable solely from a specified source, including annual appropriations by the public body.
- (3) "County attorney" means the county attorney of a county or one of his assistants.
- (4) "Lease" means any lease agreement, lease purchase agreement, and installment purchase agreement, and any certificate of interest or participation in any of the foregoing. Reference in this chapter to issuance of bonds includes execution and delivery of leases.
- (5) "Person" means any person, association, corporation, or other entity.
- (6) "Public body" means the state or any agency, authority, instrumentality, or institution of the state, or any county, municipality, quasi-municipal corporation, school district, local district, special service district, political subdivision, or other governmental entity existing under the laws of the state, whether or not possessed of any taxing power. With respect to leases, public body, as used in this chapter, refers to the public body which is the lessee, or is otherwise the obligor with respect to payment under any such leases.
- (7) "Refunding bonds" means any bonds that are issued to refund outstanding bonds, including both refunding bonds and advance refunding bonds.
- (8) "State" means the state of Utah.
- (9) "Validity" means any matter relating to the legality and validity of the bonds and the security therefor, including, without limitation, the legality and validity of:
 - (a) a public body's authority to issue and deliver the bonds;
 - (b) any ordinance, resolution, or statute granting the public body authority to issue and deliver the bonds;
 - (c) all proceedings, elections, if any, and any other actions taken or to be taken in connection with the issuance, sale, or delivery of the bonds;
 - (d) the purpose, location, or manner of the expenditure of funds;
 - (e) the organization or boundaries of the public body;
 - (f) any assessments, taxes, rates, rentals, fees, charges, or tolls levied or that may be levied in connection with the bonds;
 - (g) any lien, proceeding, or other remedy for the collection of those assessments, taxes, rates, rentals, fees, charges, or tolls;
 - (h) any contract or lease executed or to be executed in connection with the bonds;
 - (i) the pledge of any taxes, revenues, receipts, rentals, or property, or encumbrance thereon or security interest therein to secure the bonds; and
 - (j) any covenants or provisions contained in or to be contained in the bonds. If any deed, will, statute, resolution, ordinance, lease, indenture, contract, franchise, or other instrument may have an effect on any of the aforementioned, validity also means a declaration of the validity and legality thereof and of rights, status, or other legal relations arising

therefrom.

Amended by Chapter 378, 2010 General Session

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UTAH STATE LEGISLATURE

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Utah Bond Validation Act

[Section](#)[3](#)

Petition to establish validity of bonds -- Contents -- Court action.

11-30-3. Petition to establish validity of bonds -- Contents -- Court action.

(1) A public body may, at any time after it has authorized the issuance of bonds for other than a project financing involving more than one series of bonds to finance such project or at any time after it has authorized the issuance of the first series of bonds to finance a project in more than one series, but before the issuance and delivery of any such bonds or such first series of bonds, as the case may be, file a petition to establish the validity of such bonds.

(2) The petition shall be filed in the district court of the county in which the public body maintains its principal office, and shall name as defendants all taxpayers, property owners, citizens of the public body, including nonresidents owning property or subject to taxation therein, all other persons having or claiming any right, title, or interest in any property or funds affected by or to be affected by the bonds, all parties to any contract or instrument which is part of the validation proceedings, and, pursuant to Section [11-30-6](#), either the attorney general or the county attorney of the county in which the largest expenditure of proceeds of the bonds is expected to be made.

(3) The petition shall set forth and affirm, by proper allegation of law and fact:

- (a) the statutory authority by which the petition is filed;
- (b) the statutory authority by which the public body authorized the issuance of the bonds;
- (c) the ordinance, resolution, or other proceedings by which the public body authorized the issuance and delivery of the bonds;
- (d) the holding of an election and the results of that election, if an election was required;
- (e) the purpose of the bonds; and
- (f) the source of funds from which the bonds are to be paid.

(4) The petitioner may set forth any additional information with respect to such bonds and any questions of law or fact concerning the validity of the bonds that the petitioner desires the court to adjudicate separately in rendering its judgment, as well as those allegations of law or fact necessary to its consideration.

(5) The petitioner shall then petition the court to render judgment affirming the validity of the bonds and to pass upon any questions for separate adjudication set forth in the petition. Any petitioner may amend or supplement the petition at any time on or before the hearing, but not thereafter without permission of the court.

(6) No amendment or supplement may require republication of the order unless there has been a change in the issuer or there has been a substantial change in the use of the proceeds or the manner of repayment of the bonds.

Enacted by Chapter 197, 1987 General Session

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Title/Chapter/Section:

Go To

[Utah Code](#)

[Title 11](#) Cities, Counties, and Local Taxing Units

[Chapter 30](#) Utah Bond Validation Act

Section 9 Failure of validity based on substantial defects or material errors and omissions.

11-30-9. Failure of validity based on substantial defects or material errors and omissions.

No court may fail to declare bonds valid under this chapter unless the court finds substantial defects or material errors and omissions in the issuance of the bonds. Matters of form shall be disregarded.

Enacted by Chapter 197, 1987 General Session

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